



4309 North Front Street Harrisburg, PA 17110 Phone: 800-932-0661 Fax: 717-234-2695

July 20, 2011

Jennifer J. Johnson, Secretary  
Board of Governors  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, D.C. 20551

***Re: Docket No. R-1417***

Dear Ms. Johnson:

The Pennsylvania Credit Union Association (PCUA) is a state-wide advocacy organization that represents a majority of the 538 credit unions located within the Commonwealth of Pennsylvania. PCUA appreciates this opportunity to submit comments in response to the Board of Governors of the Federal Reserve System (Board) proposed rule that addresses Ability to Repay Standards (ARS) and the concept of a “qualified mortgage” as established by Title XIV of the Dodd-Frank Act, which amends the Truth-in-Lending Act. Once finalized, the proposed rule will result in amendments to Regulation Z.

To prepare this comment letter, PCUA consulted with its Regulatory Review Committee and State Credit Union Advisory Committee (the Committees). The Committees consist of CEOs and executive management staff from credit unions representing all asset-sized peer groups. The comments contained in this letter articulate the input of the Committees and PCUA staff.

As a general proposition, credit unions support consumer protection initiatives. The terms and conditions of a mortgage loan should be clearly disclosed. We agree and support disclosures or descriptions of how a mortgage loan will work. If the rate might change, we believe the consumer should have adequate notice of the change and how it might alter the corresponding payment. From a public policy perspective, however, the ARS and qualified mortgage are arguably more punitive or constraining to lenders as opposed to operating as useful consumer protections. In the long term, as lenders adjust to these rules, consumers may experience less access to credit.

Jennifer J. Johnson, Secretary

-2-

July 20, 2011

## Application of ARS and Qualified Mortgage to Credit Unions

Credit unions are non-profit, mutually owned, financial cooperative organizations. Mutual ownership is evidenced by the fact that credit unions do not issue capital stock. Further, a consumer who is eligible for membership in a particular credit union becomes an owner by virtue of opening a share account. Credit unions are democratically controlled, governed by the principle of one member, one vote. 17 P.S. § 703, 12 U.S.C.A. § 1760. Members elect the board of directors from the membership at large. Directors serve in a voluntary capacity.

Given these democratic attributes, credit unions are very focused on their member owners. Consumer protection is built into how a credit union serves its member owners. With the member owners setting the business direction of a credit union, there is little incentive to a credit union to engage in unfair or deceptive practices. Further, credit union mortgage products tend to be conservative. Credit unions did not engage in the predatory practices or offer the “low documentation” or “no documentation” loans that harmed many consumers and corrupted the secondary markets, particularly for mortgages.

We understand that the Board, and ultimately the Consumer Financial Protection Bureau (CFPB), is mandated to implement ARS and the criteria for a qualified mortgage. Its approach is very broad and encompassing, including credit unions and community banks, institutions that were not causes of the financial turmoil that began in 2008. As CFPB assumes jurisdiction to enforce the Ability to Repay rules, we would urge CFPB to use its research authority to study the lending practices of credit unions. The overall aim of such a study would be to determine whether the pro consumer practices of credit unions warrant an exemption from these very taxing provisions.

### Ability to Repay Standards

The eight factors set out in the proposed rule for evaluating a borrower’s ability to repay represent prudent mortgage underwriting techniques. The Committees illustrate that Pennsylvania’s credit unions tend to underwrite in a manner that is substantially consistent with ARS. Specifically, Pennsylvania’s credit unions underwrite mortgages to the standards of the Government Sponsored Enterprises (GSEs). A modest amount of mortgages are held in portfolio to meet unique member needs. As such in isolation, the ability to repay criteria consists of underwriting measures or practices that credit unions execute and support.

ARS does not stand alone, however. This aspect of the rule works in the context of increased penalties, including interest paid, costs and attorney’s fees as laid out in Title XIV. Record retention and building an audit trail to demonstrate compliance is an exacting exercise. For example, seeking IRS transcripts to verify a borrower’s income adds increased labor to the underwriting process. We are concerned that these standards can negate automated lending processes and procedures which benefit the consumer through lower costs.

Overall we fear ARS sets the stage for increased litigation in connection with default and collection scenarios as well as foreclosures. The intricacies of the proposed rule provide a rich environment for debtor's counsel to exploit otherwise innocent mistakes or de minimus errors in the loan underwriting and approval processes. Judgments or negotiated settlements increase the costs of mortgage lending. Ultimately, the enforcement of ARS or the anticipated litigation climate can have a chilling effect on mortgage lending, diminishing consumer access to credit, particularly mortgage loans.

### Qualified Mortgage

As a result of our concern for litigation stemming from ARS, we strongly support the adoption of the "safe harbor" approach to the definition of Qualified Mortgage. The final rule should clarify that a mortgage underwritten pursuant to the Qualified Mortgage rules absolutely complies with ARS and no private right of action should exist in such a case.

A qualified mortgage does not exist in a vacuum. The Board and, eventually, CFPB, must look at a broader horizon in terms of lender compliance and the availability of mortgages. Recently the comment period closed on rules that define credit risk retention and the specific criteria for a Qualified Residential Mortgage (QRM). QRM rules will dictate the terms and conditions of a mortgage that can be transferred into a securitization transaction exempt from credit risk retention. Some similarities exist between QRM and Qualified Mortgage. As credit unions seek to satisfy these rules the Board and CFPB must understand the balance sheet management required to support a well-performing portfolio. Meeting the expectations of prudential regulators in terms of managing interest rate risk and asset-liability management will impact a credit union's business decision in terms of what types of mortgage products to offer to the membership. Layering or weaving the rules for QRM and Qualified Mortgages into that fabric will likely yield a more limited mix of mortgage products backed by more rigid underwriting guidelines. Correspondingly, the first-time home buyer or a marginal borrower may experience less access to credit.

In sum, the Board and CFPB need to study the resulting safety and soundness and lending environment. The ongoing public policy question will be whether the Title XIV rules strike an appropriate balance between consumer protection and a market for readily available consumer credit.

### Balloon-Payment Qualified Mortgages

The proposed rule would permit some types of balloon-payment mortgages to be considered a Qualified Mortgage if extended by a lender operating predominantly in an underserved or rural area. The National Credit Union Administration (NCUA) has adopted rules for federal credit unions defining underserved and rural areas in its Chartering and Field of Membership Manual, currently Interpretive Ruling and Policy Statement 08-2. 73 Federal Register 73392. The application of the NCUA rules for underserved and rural areas may be more appropriate for federally insured credit unions in the context of the ARS and Qualified Mortgage regulation.

Jennifer J. Johnson, Secretary

## Foreclosure Defense

Title XIV and the proposed rule permit a borrower to raise compliance with ARS as a defense to a foreclosure action. This rule raises serious Federalism or pre-emption concerns. For example, foreclosure in the Commonwealth of Pennsylvania is a judicial proceeding. Pennsylvania limits defenses or counterclaims to foreclosure to the same transaction in which the mortgagor's claim arose. Rule of Civil Procedure 1148, 42 Pa. C.S.A., *Cunningham v. McWilliams*, 714 A. 2d 1054 (1998), *Chrysler First Business Credit Corp. v. Gourniak*, 601 A. 2d 338 (1992). Civil actions are largely a state matter and should remain so.

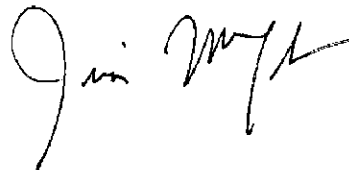
## Conclusion

Credit unions will gladly support consumer protection initiatives. Several aspects of the ARS and definition of a Qualified Mortgage have merit. Regrettably, the corresponding compliance environment and the foreseeable litigation scenarios created by the structure of Title XIV of the Dodd Frank Act and the proposed rule are likely to constrict mortgage offerings by credit unions. We urge the Board and CFPB to study the balance sheet and interest rate consequences of the proposal. Permitting credit unions to look to NCUA's definitions of underserved and rural areas is consistent with the intent of the balloon-payment qualified mortgage.

PCUA would be happy to address any questions the Board may have with regard to our comments at your convenience.

Very truly yours,

PENNSYLVANIA CREDIT UNION ASSOCIATION

A handwritten signature in black ink, appearing to read "Jim McCormack", with a stylized flourish at the end.

James J. McCormack  
President/CEO

cc: PCUA Board  
Regulatory Review Committee  
State Credit Union Advisory Committee  
M. Dunn, CUNA